IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.9513 OF 2004

Laxmandas Bhimdas Wanvade & others .... Petitioners

Vs.

Haribhau Shankar Borse & others .... Respondents

Sarvasri N.B. Shah i/b Piyush Shah for the Petitioners.

Shri P.S. Dani for the Respondent No.1.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: DECEMBER 06, 2004

P.C:

1. Heard the learned Advocates for the parties.

2. The trial Court has dismissed the application for eviction on both the grounds, namely, bona fide need of the premises for the personal occupation of the landlord as well as default in the payment of rent. The lower Appellate Court, however, set aside those findings and decreed the suit for eviction on both the grounds. As regards the ground of bona fide need of the premises, apparently the learned Advocate for the petitioners is justified in submitting that in the absence of the pleadings that the premises were required for the landlord himself and when the pleadings specifically

disclose that the need was that of the sons of the landlord and not of the landlord himself, merely because the landlord had led evidence as regards the need of the landlord himself, the lower Appellate Court could not have decreed the suit for eviction on the basis which were not disclosed in the pleadings. Hence the finding as regards the bona fide need of the premises cannot be sustained. However, as already stated above, the eviction has also been ordered on the ground of default in the payment of rent.

3. As regards the default in the payment of rent, it was the case of the petitioners that the respondent/landlord used to collect the rent as per his convenience and therefore the rent was not being paid every month, though it was a monthly tenancy. The lower Appellate Court in that regard has clearly observed that "It seems that, he has adopted practice to pay the rent only if somebody came to receive it, and that was not as per the terms of the contract." Apparently, there was no plea to the effect that there was any practice of paying the rent for two or three months together and that the landlord had agreed to such a practice of payment of rent. Obviously it was an unilateral act on the part of the petitioner/tenant to pay as per his convenience. That itself cannot lead to the conclusion that there was any such contract or practice agreed upon between the

parties. In fact, the lower Appellate Court, on analysis of the evidence, has held that the acts on the part of the petitioner/tenant to pay the rent only when somebody approached to him to collect the rent clearly disclose that there was no practice accepted or agreed upon between the parties and therefore there was a clear case of default in the payment of rent. Hence the findings arrived at by the lower Appellate Court regarding default in the payment of rent being borne out from the records does not warrant any interference in writ jurisdiction.

4. In the circumstances, therefore, though the finding regarding the bona fide need of the premises may not be sustainable, at the same time, the finding regarding default in the payment of rent being clearly borne out from the records, it does not warrant interference and as the eviction can be ordered on any one of the grounds available to the landlord, certainly the impugned judgment does not warrant interference in writ jurisdiction under Article 227 of the Constitution of India. Hence the petition fails and is hereby rejected.

5. On oral request by the learned Advocate for the petitioners, time to vacate the suit premises is extended till 31-3-2005, subject to submitting undertaking by the petitioners and every adult member of

the petitioners' family as well as those occupying the premises, to be filed before the Registrar (Judl.) of this Court within three weeks from today assuring that the petitioners shall handover the vacant and peaceful possession of the suit premises to the respondent/landlord on or before 31-3-2005 and shall not induct any third person nor shall create any third party interest in the suit premises. Failure to submit such undertaking within three weeks, would result in automatically vacating the order extending the time to vacate the premises, without being referred to the Court.